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WESTERN DISTRICT OF LOUISIANA

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

LAKE CHARLES DIVISION

UNITED STATES OF AMERICA \* CRIMINAL NO. 2: 05 CR 20223-001

VERSUS \* JUDGE MINALDI

MARCUS WAYNE HENDERSON \* MAGISTRATE JUDGE KAY

**MEMORANDUM ORDER**

Presently before the court is the defendant's letter Motion for Clarification [doc. 68].

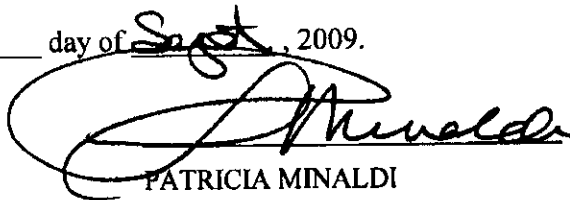
The defendant filed what was docketed as a Motion for a Certificate of Appealability [doc. 62] on July 16, 2009. The court denied this motion on July 24, 2009 [doc. 64].

The defendant then filed a Motion for a Certificate of Appealability ("COA") [DOC. 67] on August 3, 2009. In this Motion for Clarification, the defendant argues that the July 16 motion was merely a "Notice" of a Request for a COA and that the court's denial was premature.

The motion filed July 16, 2009, acted as a Notice of Appeal and a Motion for a COA. A Notice of Intent to file for a COA is not required. To obtain a COA, Henderson must make, "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). When the district court has denied an application for a writ of habeas corpus on substantive grounds that means that Henderson must show that, "reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 120 S.Ct. 1595, 1604, 146 L.Ed.2d 542 (2000). The defendant has not met his burden for obtaining a COA. Accordingly,

IT IS ORDERED that the defendant's Motion for Clarification IS DISMISSED AS MOOT.

Lake Charles, Louisiana this 1 day of Sept, 2009.

A handwritten signature in black ink, appearing to read 'P. Minaldi', is written over a horizontal line.

PATRICIA MINALDI

UNITED STATES DISTRICT JUDGE